IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO.1788 OF 2006

M/s Pharma Search Laboratories... Petitioner

versus

The State of Maharashtra & anr .. Respondents

Ms.Amita Kuttikrishnan,Advocate for Petitioner

Mr.A.S.Gadkari,A.P.P.for Respondents

CORAM : J.N.PATEL AND

SMT.ROSHAN DALVI, JJ

DATED : 19th September, 2006

P.C.

1. Heard. The learned A.P.P. waives service of the petition.

2. The petitioner has approached this Court impugning the order dated 19th April, 2006 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Bombay in C.C.No. 73/M-2005.

3. The main grievance of the petitioner appears to be that the learned Magistrate ought to have ordered an investigation under section 156 (3) of Cr.P.C. instead of ordering process under section 200 Cr.P.C. We are not adverting to the merits of the matter but, on going through the impugned order dated 19th April, 2006 what we find is that the learned Magistrate is yet to take cognizance of the offence and he has fixed the complaint case for recording the verification of the complainant. We make it clear that it is only after the learned Magistrate records the verification by examining the complainant or any person on his behalf, the learned Magistrate can take a decision whether to issue process or order an investigation under section 156 (3) of Cr.P.C.

4. The contention of the petitioner-complainant appears to be that the bill of exchange which forms the cause of action are forged documents. If that

is so, nothing prevents the complainant from summoning the concerned bank who is in possession of the document i.e. the bill of exchange which were presented for discounting and after hearing the complainant, the learned Magistrate can very well refer the bill of exchange dated 19th March, 2006 for examination by a Government Examiner of documents if a case is made out by the complainant.

5. The impugned order therefore, does not call for any interference and the learned Magistrate can consider the prayer of the petitioner after recording his verification.

6. The petition stands disposed of accordingly.

(Smt Roshan Dalvi,J) **(J.N.Patel, J)**